

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HILDEBRANDO MUNOZ DELGADO	:	CIVIL ACTION
	:	2:05-cv-5480
v.	:	
	:	CRIMINAL ACTION
UNITED STATES	:	2:92-cr-248-25

MEMORANDUM AND ORDER

Juan R. Sánchez, J.

October 21, 2005

Hildebrando Munoz Delgado asks to have his sentence vacated pursuant to Federal Rule of Criminal Procedure 60(b). Because Delgado collaterally attacks his underlying conviction, the Court must treat this motion as a successive habeas petition and dismiss it for lack of jurisdiction.

FACTS

In 1999, Delgado pled guilty to conspiracy to distribute and possess with intent to distribute five kilograms or more of cocaine, and to use a telephone to facilitate commission of a drug felony, in violation of 21 U.S.C. §§ 841(a)(1), 843(b) and 846. He was sentenced to 151 months imprisonment and five years supervised release and assessed a \$500 fine and \$50 special assessment. The Third Circuit affirmed his conviction and sentence in 2001. Delgado did not seek an appeal, but filed a 28 U.S.C. § 2255 motion to vacate his sentence in light of the Supreme Court's decision in *Apprendi v. New Jersey*, 530 U.S. 466 (2000). This motion was denied in 2002.

Delgado now moves for relief pursuant to Federal Rule of Civil Procedure 60(b) asserting the district court lacked jurisdiction to convict and sentence him because of a violation of his speedy trial right and therefore the integrity of his habeas proceeding is in question.

Delgado asks the Court to vacate his conviction and sentence and release him from custody. This Court must treat this motion as a successive habeas petition because Delgado collaterally attacks his underlying conviction. Because Delgado failed to receive pre-certification by the Third Circuit to file a successive habeas petition, this Court must dismiss the motion for lack of jurisdiction.

DISCUSSION

Rule 60(b) permits a party to seek relief from a final judgment in a limited set of circumstances, including mistake, excusable neglect, newly discovered evidence, fraud, or other reason justifying relief. Fed. R. Civ. P. 60(b). In *Pridgen v. Shannon*, 380 F.3d 721 (3d Cir. 2004), *cert. denied* 125 S. Ct. 1298 (2005), the Third Circuit addressed how a court should consider a Rule 60(b) motion in the context of a habeas petitioner who has previously moved for habeas relief. When the “factual predicate of a petitioner’s Rule 60(b) motion attacks the manner in which the earlier habeas judgment was procured and not the underlying conviction,” the district court can consider the merits of the relief requested. *Pridgen*, 380 F.3d at 727. However, when the motion “seeks to collaterally attack the petitioner’s underlying conviction, the motion should be treated as a successive habeas petition.”¹ *Id.*

Although Delgado’s motion relies on Rule 60(b), it attacks the validity of his federal conviction and the legality of the sentence that he is currently serving. Pursuant to the rule

¹ Although the *Pridgen* opinion dealt with the interaction of Rule 60(b) and habeas proceedings following a state conviction, its holding is equally applicable in the context of a federal conviction. See *United States v. Tam*, Nos. 98-00550-01 & 03-0141, 2005 U.S. Dist. LEXIS 7788, at *4-5 (E.D. Pa. Mar. 1, 2005) (applying *Pridgeon* to deny a Rule 60(b) motion as a successive habeas petition filed by a federal prisoner); see also *Ingrati v. United States*, Nos. 89-49-KAJ & 04-355-KAJ, 2004 U.S. Dist. LEXIS 13492, at *9 & n.7 (D. Del. Jul. 14, 2004) (holding federal prisoner could not circumvent AEDPA’s procedural barriers by captioning his motion as Rule 60(b)).

established in *Pridgen*, Delgado can only make this argument in a motion under 28 U.S.C. § 2255 because he attacks his underlying conviction. This Court thus must recharacterize his motion as a successive habeas petition, which is governed by the Antiterrorism and Effective Death Penalty Act (AEDPA). 28 U.S.C. §§ 2241 *et seq.*

Under AEDPA, a petitioner has no automatic right to file a second or successive petition for writ of habeas corpus. Rather, a “second or successive motion must be certified as provided in section 2244.” 28 U.S.C. § 2255. Section 2244 states that the district court must dismiss with prejudice any identical claims asserted in a successive petition that were presented in a prior application. 28 U.S.C. § 2244(b)(1). If the issues raised in the petition are new, “the applicant [must] move in the appropriate court of appeals for an order authorizing the district court to consider the application” prior to filing in the district court. 28 U.S.C. § 2244(b)(3)(A). Delgado never raised the alleged Sixth Amendment violation in his first habeas petition. Without an order from the Third Circuit allowing him to file a successive habeas motion in this court, this Court lacks jurisdiction to consider the merits of his claim. *Robinson v. Johnson*, 313 F.3d 128, 140 (3d Cir. 2000) (holding AEDPA “limits the authority of the district court to consider second or successive petitions without an order of the court of appeals”); *see also Nunez v. United States*, 96 F.3d 990, 991 (7th Cir. 1996) (“A district court must dismiss a second or successive petition, without awaiting any response from the government, unless the court of appeals has given approval for its filing.”). Therefore, the court must dismiss his Rule 60(b) motion for relief from judgment.

Accordingly, I enter the following:

ORDER

AND NOW, this 21st day of October, 2005, it is hereby ORDERED that Defendant's Motion Pursuant to Fed. R. Civ. P. 60(b) (Document 1) is DENIED.

BY THE COURT:

Juan R. Sánchez, J.